

REMARKS

1. In response to the Office Action mailed April 7, 2008, Applicants respectfully request reconsideration. Claims 139-176 were last presented for examination. In the outstanding Office Action, all claims have been rejected. By the foregoing Amendments, claims 139-141, 145, 147, 150, 154-157, 159, 162-166, 168, and 171-175 have been amended. No claims have been added or cancelled. No new matter has been added. Upon entry of this paper, claims 139-176 will be pending in this application. Of these 38 claims, four (4) claims (claims 139, 156, 165, and 174) are independent. Based upon the following Remarks, Applicants respectfully request that all outstanding objections and rejections be reconsidered, and that they be withdrawn.

Art of Record

2. Applicants acknowledge receipt of form PTO-892 listing additional references identified by the Examiner.

Drawings

3. Applicants thank the Examiner for accepting the drawings filed on June 25, 2007.

Priority Claim

4. Applicants note with appreciation the Examiner's acknowledgement of Applicants' claim for foreign priority under 35 U.S.C. §119, and for indicating that copies of the certified copies of the priority documents have been received from the International Bureau.

Claim rejections

5. Claims 139-142, 145-150, 152-161, 163-170, and 172-176 have been rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,626,629 to Faltys *et al* ("Faltys"). For at least the following reasons, Applicant respectfully traverses these rejections.

6. Faltys is directed to “a method and apparatus for fitting an auditory stimulation system involve[ing]... coupling a programmer unit to an implanted unit implanted in the patient” and performing various tests and adjustments on the implanted unit. (*See*, Faltys, Abstract.) As noted by the Examiner, two “systems” are illustrated and described in Faltys. (*See*, Faltys, FIG. 1.) In Faltys, the first “system” is fitting system 10 and comprises a programmer unit 14, which may be a computer system running Microsoft Windows or other program. (*See*, Faltys, col. 5, ll. 20-26.) Coupled to programmer unit 14 is a clinician’s programmer 22, which is itself coupled to a graphic equalizer board 28 and to the second “system” of Faltys, namely the implantable prosthesis, referred to in Faltys as patient system 12. (*See*, Faltys, col. 5, ll. 20-51; FIG. 1.) Patient system 12 comprises speech processor 36 that is connected to transmitting/receiving coil 42. Under the recipient’s skin 44 is a transmitting/receiving coil 48 that is coupled to electrode array 50. (*See*, Faltys, FIG. 1, col. 5, ll. 52-65, col. 6, ll. 5-18.)

7. In Faltys, programmer unit 14 is a part of the fitting system 10 and is used to perform the various testing / fitting functions described in Faltys. Specifically, in Faltys, “programmer unit 14, which may be a personal computer, is modified with custom programming... to carry out various functions of the present invention.” (*See*, Faltys, col. 6, ll. 43-46.) Examples of such functions include the maintenance of a patient database, assuring that governmental regulations concerning the fitting of the patient system are met, recording objective measurements from the prosthesis (patient system 12), estimating and displaying threshold stimulation levels for each of the channels of prosthesis (patient system 12), among others. (*See*, Faltys, col. 6, ll. 47, 56, col. 7, ll. 2, 43-45.) Clearly in Faltys, the first system (fitting system 10) is performing tests on and recording data from the second system (patient system 12).

8. Claim 139 recites, in part, “A system for performing one or more tests on a prosthesis ... comprising: **a clinician subsystem**, comprising a clinician interface, configured to enable a clinician to provide one or more clinician input from said clinician interface to perform one or more of **selecting and customizing the one or more tests** for the recipient; and **a recipient subsystem**... configured to receive one or more recipient input, from said recipient interface, and to **perform the one or more tests** received from and **independent of the clinician subsystem on said prosthesis.**” (*See*, Applicants’ independent claim 139, as amended above; emphasis added.)

9. Unlike Applicants' claimed invention, Faltys describes a fitting system 10 which both prepares and performs the fitting process on the patient system 12 (prosthesis). Applicants' independent claim 139, as amended, describes a clinician subsystem which allows a clinician to use the clinician subsystem to select and customize the test, and a *separate component* (a recipient subsystem) to receive and then perform the tests on the prosthesis. Clearly, the device described in Faltys does not anticipate Applicants' invention as claimed. First, the Faltys device is not described as comprising two separate subsystems as is the case with Applicants' claimed invention. Rather, there is a single fitting system 10 which is described as using various input and other control devices to carry out the fitting process. Also, the portion of Faltys which the Examiner refers to as being the "recipient subsystem" is in fact patient system 12, which includes the speech processor 36 and other various transmitting/receiving coils 42, 48 and other components of the hearing prosthesis, and not a part of fitting system 10. The fact that the Faltys apparatus is a single fitting system 10 which does not select and/or customize various tests to be provided to any recipient subsystem for separate and independent performing of those selected and/or customized tests does not provide the benefits afforded by a system so configured. For example, the system described by Faltys would not allow the tests to be performed at a later time or from a remote computer or physical location. Therefore, Faltys does not anticipate Applicants' invention as claimed above. Faltys also does not suggest Applicants' claimed invention as there is no suggestion whatsoever for modifying Faltys, or any other reference on record, to provide the various benefits afforded by Applicants' claimed invention. Therefore, Faltys fails to teach or suggest every element of independent claim 139, for at least the reasons stated above.

10. Independent claim 156 recites, in part, "selecting one or more tests via a clinician subsystem, comprising a clinician interface, configured to allow a clinician to provide clinician input to the clinician interface to select the one or more tests for the recipient; *customizing said selected one or more tests... delivering said customized one or more tests to a recipient subsystem... performing* said customized one or more tests on the prosthesis... *independent of the clinician subsystem... and delivering the result data to the clinician subsystem.*" (See, Applicants' independent claim 156, as amended, above; emphasis added.) Independent claim

156 is allowable over Faltys for similar reasons that claim 139 is patentable and non-obvious over Faltys, as describe above.

11. Similarly, independent claim 165 recites, in part, “selecting one or more tests via a clinician subsystem, comprising a clinician interface, configured to allow a clinician to provide clinician input to the clinician interface to select the one or more tests for the recipient; *customizing said selected one or more tests... delivering said customized one or more tests to a recipient subsystem... performing* said customized one or more tests on the prosthesis... *independent of the clinician subsystem... and delivering the result data to the clinician subsystem.*” (See, Applicants’ independent claim 165, as amended, above; emphasis added.) Independent claim 165 is allowable over Faltys for similar reasons that claim 139 is patentable and non-obvious over Faltys, as describe above.

12. Furthermore, independent claim 174 recites, in part, means for selecting one or more tests via a clinician subsystem configured to allow a clinician to provide clinician input to select the one or more tests for the recipient; *means for customizing* said selected one or more tests; means for *delivering said customized one or more tests to a recipient subsystem*; means for *performing* said customized one or more tests on the prosthesis, *using the recipient subsystem and independent of the clinician subsystem...* and means for *delivering the result data to the clinician subsystem.* (See, Applicants’ independent claim 165, as amended, above; emphasis added.) Independent claim 165 is allowable over Faltys for similar reasons that claim 139 is patentable and non-obvious over Faltys, as described above.

13. For the reasons noted above, Applicants respectfully request that the rejections of claims 139, 156, 165, and 174 under 35 U.S.C. §102 be reconsidered, and that they be withdrawn.

Dependent claims

14. The dependent claims incorporate all the subject matter of their respective independent claims and add additional subject matter which makes them independently patentable over the art of record. Accordingly, Applicants respectfully assert that the dependent claims are also allowable over the art of record.

Conclusion

15. In view of the foregoing, this application should be in condition for allowance. A notice to his effect is respectfully requested.
16. Applicants reserve the right to pursue any cancelled claims or other subject matter disclosed in this application in a continuation or divisional application, cancellations and amendments of above claims, therefore, are not to be construed as an admission regarding the patentability of any claims and Applicants reserve the right to pursue such claims in a continuation or divisional application.

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Respectfully submitted,

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